APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
2143	

NOTIFICATION DATE	DELIVERY MODE
05/30/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Office Action Summary	09/884,741	HOLZER, DAVID
	Examiner	Art Unit	
	DAVID E. ENGLAND	2143	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>17 March 2008</u>.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☐ Claim(s) <u>1-30</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-30</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1 – 30 are presented for examination.

Claim Rejections - 35 USC § 112

2.   The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making
> and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it
> pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode
> contemplated by the inventor of carrying out his invention.

3.   Claims 1 – 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with

the written description requirement. The claim(s) contains subject matter which was not

described in the specification in such a way as to reasonably convey to one skilled in the relevant

art that the inventor(s), at the time the application was filed, had possession of the claimed

invention.

4.   The independent claims recite the limitation of, "without having to install a device driver

for said device", or the like. There is no teachings in the Applicant's specification that shows this

limitation occurring. Applicant is asked to amend the limitation out to comply with what is truly

taught in their specification.

5.   All other dependent claims are rejected for their dependency on the above rejected

independent claims.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
such that the subject matter as a whole would have been obvious at the time the invention was made to a person
having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
manner in which the invention was made.

7.   **Claims 1, 2, 4, 6 – 9, 13 – 17 and 19 – 28 are rejected under 35 U.S.C. 103(a) as being**

unpatentable over Anderson et al. (6636259) (hereinafter Anderson).

8.   Referencing claim 1, as closely interpreted by the Examiner, Anderson teaches a method

comprising:

9.   receiving at a service aggregator information from a device first, (e.g. col. 2, line 59 –

col. 3, line 14, col. 10, lines 1 - 36); and

10.   transmitting information from the service aggregator to the device directing the device to

communicate with a service provider, (e.g. col. 2, line 59 – col. 3, line 14, col. 10, lines 1 - 36).

Anderson does not specifically teach without having to install a device driver for the device.

Anderson teaches all of the device drivers already installed in the devices utilized and therefore

does not require an installation step and can be interpreted in the same light as the limitation

above. It would have been obvious to one of ordinary skill in the art at the time the invention was

made to pre-install device drivers so to alleviate the need for a user to install them and prevent

the user to install the drivers incorrectly, therefore preventing errors.

11.   Referencing claim 2, as closely interpreted by the Examiner, Anderson teaches

comprising the service aggregator communicating information about the device to the service

provider, (e.g. col. 10, lines 54 – 63).

12.   Referencing claim 4, as closely interpreted by the Examiner, Anderson teaches the

service aggregator communicating user options to the device, (e.g. col. 10, lines 54 – 63).

13.   Referencing claim 6, as closely interpreted by the Examiner, Anderson teaches the

information from the device is input by a user, (e.g. col. 10, lines 54 – 63).

14.   Referencing claim 7, as closely interpreted by the Examiner, Anderson teaches receiving

from the service provider an aggregation of choices for the device, (e.g. col. 10, lines 54 – 63).

15.   Referencing claim 8, as closely interpreted by the Examiner, Anderson teaches the

choices are displayed on the device and a user may select a specific choice, (e.g. col. 10, lines 54

– 63).

16.   Referencing claim 13, as closely interpreted by the Examiner, Anderson teaches a method

of device relationship management, comprising:

17.   determining a new connection event from a device, (e.g. col. 10, lines 38 – 53);

18.   sending a new connection message to the device upon said determining said new

connection event from said device, (e.g. col. 10, lines 54 – 64);

19.   determining and optionally updating the device upon said sending said new connection

message to the device, (e.g. col. 10, lines 30 – 37);

20.   sending messages to the device upon said determining and optionally updating the

device, (e.g. col. 10, lines 38 – 53);

21.   receiving user input from the device upon said sending messages to the device, (e.g. col.

10, lines 15 – 29); and

22.   configuring the device upon said receiving user input from the device, (e.g. col. 10, lines

38 – 53), but does not specifically teach without having to install a device driver for said device.

23.   Anderson teaches all of the device drivers already installed in the devices utilized and

therefore does not require an installation step and can be interpreted in the same light as the

limitation above. It would have been obvious to one of ordinary skill in the art at the time the

invention was made to pre-install device drivers so to alleviate the need for a user to install them

and prevent the user to install the drivers incorrectly, therefore preventing errors.

24.   As per claim 9, as closely interpreted by the Examiner, Anderson teaches the choices are

account choices, (e.g. col. 10, lines 54 – 63).

25.   Referencing claim 14, as closely interpreted by the Examiner, Anderson teaches updating

the device comprises updating the device's memory, (e.g. col. 10, lines 38 – 53).

26.   Referencing claim 15, as closely interpreted by the Examiner, Anderson teaches

determining a service provider, (e.g. col. 10, lines 30 – 37); and

27.   transferring to the device communication information about the service provider, (e.g.

col. 10, lines 38 – 53).

28.   Referencing claim 16, as closely interpreted by the Examiner, Anderson teaches

transferring to the device communication information about the service provider further

comprises instructing the device to establish a connection with the service provider, (e.g. col. 10,

lines 38 – 53).

29.   Claim 17 is rejected for similar reasons stated in claim 13.

30.   Claims 19 – 28 are rejected for similar reasons stated above.

31.   Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in

view of Morris (6353848).

32.   As per claim 3, Anderson does not specifically teach the service aggregator

communicating update information to the device. Morris teaches the service aggregator

communicating update information to the device, (e.g. col. 14, lines 12 – 30). It would have been

obvious to one of ordinary skill in the art at the time the invention was made to combine Morris

with Anderson because it would be more convenient for a system to download the update

information that could enable a user to use software that could give a device added features on

said device in a network than having the device separately install the software from a portable

disk, (i.e. CD ROM).

33.   Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in

view of Mighdoll et al. (6662218) (hereinafter Mighdoll).

34.   As per claim 5, as closely interpreted by the Examiner, Anderson does not specifically

teach the service provider communicating update information to the device. Mighdoll teaches the

service provider communicating update information to the device, (e.g. col. 16, lines 38 – 56). It

would have been obvious to one of ordinary skill in the art at the time the invention was made to

combine Mighdoll with Anderson because of similar reasons stated above.

35.   Claims 10 – 12, 18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Anderson (6636259) in further view of Cook et al. (6636259) (hereinafter

Cook).

36.   As per claim 10, as closely interpreted by the Examiner, Anderson teaches the

information received at the service aggregator is selected from the group consisting of device

attribute information, account information, type of device information, application information,

(e.g. col. 10, lines 54 – 64), branding information, device serial number information, (e.g. col. 7,

lines 13 – 20), but does not specifically teach and last time used information.

37.   Cook teaches last time used information, (e.g. col. 10, lines 30 – 50). It would have been

obvious to one of ordinary skill in the art at the time the invention was made to combine Cook

with Anderson because providing device information to a central location would give the system

information to bill the user for services rendered.

38.   As per claim 11, as closely interpreted by the Examiner, Anderson teaches the branding

information is prespecified in the device, (e.g. col. 7, lines 13 – 20).

39.   As per claim 12, as closely interpreted by the Examiner, Anderson teaches the account

information is input by a user, (e.g. col. 7, lines 13 – 20).

40.   Claims 18 are rejected for similar reasons as stated above.

41.   As per claim 29, as closely interpreted by the Examiner, Anderson does not specifically

teach determining a sufficiency of a payment from a payor. Cook teaches determining a

sufficiency of a payment from a payor, (e.g. col. 21, lines 11 – 29). It would have been obvious

to one of ordinary skill in the art at the time the invention was made to combine Cook with

Anderson because of similar reasons stated above. Furthermore, it would be more beneficial for a

system to keep track of services rendered by a service provider and to keep users that are

delinquent on payments, out of the system until such payment is received for services rendered.

42.   As per claim 30, as closely interpreted by the Examiner, Anderson teaches the payor is

selected from the group consisting of a subscriber, a non-subscriber, a sponsor, and an advertiser,

(e.g. col. 4, lines 10 – 24).

Response to Arguments

43.   Applicant's arguments filed 02/15/2007, with respect to Ward have been fully considered

and are persuasive. The 102 rejection utilizing Ward has been withdrawn.

44.   Applicant's arguments with respect to claims 1 – 30 have been considered but are moot in

view of the new ground(s) of rejection.

45.   Applicant's other arguments filed 02/15/2007 have been fully considered but they are not

persuasive.

46.   **In the Remarks**, Applicant argues in substance that the definitions for "provider" and

"aggregator" from Webster's 1828 dictionary showing the differences were well known for over

150 years.

47.   As to the first argument, Examiner would like to point out that the **computers didn't**

exist 150 years ago and neither did the internet as it is known when the application was filled**.**

Applicant is advised to view over their claims and how they can be interpreted in light of the

NETWORKING ART as of the filing date of your application, for it can be interpreted that a

service provider can have their users go through them at all times when transmitting requests.

Therefore, the service provider is a point where all data must go through, or an aggregator.

Furthermore, a server that provides a service can be considered a "service provider", such as

providing a storage service. The Applicant is welcome to contact the Examiner if they feel that

this argument is not resolved to expedite prosecution.

48.   **In the Remarks**, Applicant argues in substance that the Examiner has failed to perform a

substantive examination of claims 25 and 26.

49.   As to the second argument, if the Applicant were to look at claim 25, one can clearly see

that this is nothing more then an apparatus claim with language almost identical to claim 1 and is

therefore rejected for the same reasons as stated above and in previous rejections. Now, if the

Applicant were to look at claim 26, it is very clear that this claim can be interpreted as a device

on the Internet or any network and is taught by the prior art as can be seen in the sections

provided.

50.   Furthermore, when reviewing a reference the applicants should remember that not only

the specific teachings of a reference but also reasonable inferences which the artisan would have

logically drawn therefrom may be properly evaluated in formulating a rejection. In re Preda, 401

F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148

(CCPA 1963). Skill in the art is presumed. In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed.

Cir. 1985). Furthermore, artisans must be presumed to know something about the art apart from

what the references disclose. In re Jacoby, 309 F. 2d 513, 135 USPQ 317 (CCPA 1962). The

conclusion of obviousness may be made from common knowledge and common sense of a

person of ordinary skill in the art without any specific hint or suggestion in a particular reference.

In re Bozek, 416 F.2d 1385, 163 USPQ 545 (CCPA 1969). Every reference relies to some extent

on knowledge of persons skilled in the art to complement that which is disclosed therein. In re

Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).

51.   Applicant is also asked to take the thorough look at the prior art of Lynam et al. 6934372

along with the previously send prior art, for they too teach the application.

Conclusion

52.   **Applicant is advised to contact the Examiner to resolve any discrepancies on claim**

interpretations, ambiguities and possible claim amendments to overcome the prior art.

        Any inquiry concerning this communication or earlier communications from the

examiner should be directed to DAVID E. ENGLAND whose telephone number is (571)272-

3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

        Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

                                        David E. England

Primary Examiner
Art Unit 2143

/David E. England/
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